

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DAVID PALAND,  
Plaintiff,  
v.  
ROY RICHARD WILLIAMS, et al.,  
Defendants.

Case No. [14-cv-00631-RS](#)

**ORDER DENYING MOTION TO  
STRIKE AND VACATING HEARING  
ON MOTION TO DISMISS**

Pursuant to Civil Local Rule 7-1(b), plaintiff’s motion to strike the pending motion to dismiss is suitable for disposition without oral argument. The motion to strike is denied, rendering the associated request to hear it on shortened time moot.

Plaintiff contends the motion to dismiss was untimely because it was filed more than 14 days after he personally delivered a copy of the Second Amend Complaint to the offices of defendant’s counsel. The motion, however, was filed within 14 days of entry of the Second Amended Complaint into the ECF system, which under Civil Local Rule 5-1(h) generally results in the completion of service. The fact that plaintiff himself is not a registered e-filer does not render Rule 5-1(h) inapplicable on its face. Defendants acted reasonably in calculating their response date, even if a technical argument can be constructed that the time began running earlier. Additionally, while any failure to comply with the timing requirements of the federal and local rules is not a matter to be taken lightly, a motion to dismiss filed a few days late generally would not be stricken, and there would have been no reason to do so here, even in the absence of

1 ambiguity as to the response date.

2 Plaintiff further argues the motion to dismiss should be stricken because, he contends, the  
3 defenses advanced are either “insufficient” or have been “waived.” Such arguments belong in an  
4 opposition brief, and indeed, plaintiff has raised them in his. They do not support a separate  
5 motion to strike. Were it otherwise, then virtually every motion to dismiss would result in a  
6 motion to strike, with the consequent wasteful duplication of arguments and unnecessary  
7 consumption of Court and party time that has occurred here.

8 The merits of plaintiff’s arguments will be addressed in conjunction with the motion to  
9 dismiss. Pursuant to Civil Local Rule 7-1(b), that motion also is suitable for disposition without  
10 oral argument, and the hearing set for November 13, 2014 is vacated.

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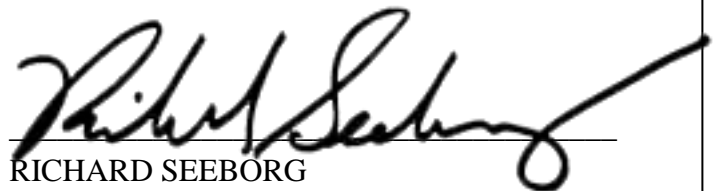
13 **IT IS SO ORDERED.**

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15 Dated: November 7, 2014

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RICHARD SEEBORG  
United States District Judge

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